THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.20480 OF 2005

ORDER:

This Writ Petition is filed seeking a direction to the respondents to provide power supply to the premises bearing House No. 12-7-110, on the basis of their application No.AAE/OP/TNK/D No.199/05, dated 29.07.2005.

The 1st petitioner claims to be the owner and possessor of the property admeasuring 1637.73 sq. metres, being part of House No.12-7-110, situated at Keshav Nagar Colony, Mettuguda, Secunderabad. It is stated that he along with his family members entered into a development agreement-cum-General Power of Attorney with the 2nd petitioner for construction of residential flats in the said premises. The said agreement was executed on 21.06.2004 and the same was also registered. As per the said agreement, it was agreed that the petitioners would share the built up area and bear the cost of the infrastructure like electricity etc., in the proportion 58%:42%. Accordingly, the 2nd petitioner made an application dated 29.07.2005 requesting the respondents to provide fresh connection of power supply to enable the 2nd petitioner to start the work. However, the 2nd respondent by letter dated 02.08.2005 informed the 2nd petitioner that one service connection bearing SC No.V6-27233 of Category III is under OSL with arrears of Rs.3,64,487/- in respect of the said premises bearing House No.12-7-110, and therefore, fresh service connection cannot be released until the dues are cleared. The 3rd respondent by letter dated 6.08.2005 informed the 2nd petitioner that apart from the arrears of Rs.3,64,487/- towards consumption charges, a further sum of Rs.37,510/- towards theft case and Rs.15,754/- towards surcharge, totaling to Rs.4,17,757/- was due under the earlier service connection, as of today. The 1st petitioner states that one Manoranjani, Proprietor of Mahindar Food Industries was the lessee in respect of the premises in question under a lease agreement executed on 1.03.1990 for a period of five years. The said lease period came to an end in February, 1995 and the lessee vacated the premises in the year 1995 itself. It is also not in dispute that the service

connection provided at the instance of the said lessee was also disconnected immediately, thereafter. As per the terms of the lease agreement executed in favour of the said Manoranjani, the lessee was entitled to get the power supply at her own expense and also liable to pay electricity charges thereto. In the circumstances, the contention of the petitioners is that the respondents are not justified in declining to provide fresh service connection to the premises, on the ground of the alleged arrears payable by the lessee, who is no more continuing in possession.

On behalf of the respondents a counter-affidavit has been filed, in which, the fact that the 2nd petitioner made an application for fresh service connection has not been disputed. However, it is stated that since there were outstanding dues to an extent of Rs.4,17,757/- against the existing service connection, which was disconnected, the request of the 2nd petitioner could not be considered.

I have heard the learned counsel for the petitioners as well as the learned Standing Counsel appearing for the respondents.

Learned counsel for the petitioners submitted that since there is no privity of contract between the petitioners and the respondents, the impugned action of the respondents is arbitrary and illegal.

On the other hand, the contention of the learned Standing Counsel appearing for the respondents is that the 1st petitioner who is the owner of the premises is bound by the agreement entered into between his previous tenant and the respondent-Corporation, and therefore, the respondents cannot be found fault with in refusing to provide service connection on the ground of non-payment of the arrears standing in the name of his previous tenant.

It is to be noted that admittedly the service connection bearing No.V6-27233 was in the name of the previous tenant by name Smt. Manoranjani. May be that the 1st petitioner is the owner of the premises in question, but admittedly, he was not a party to the agreement between his previous tenant and the respondent-Corporation. So far as the 2nd petitioner is concerned, he is only a developer who entered into a development agreement with the 1st petitioner for the purpose of construction of residential flats in the premises in question. In the circumstances, the question that arises for consideration is whether it is open to the respondent-Corporation to refuse to provide fresh service connection as sought by the petitioners merely on the

ground that the past arrears are not cleared.

An identical question has been considered by the Apex Court in **Isha Marbles V. Bihar State Electricity Board**, in which it has been held as under:

" … it is clear that the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property. Where that premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bona fides of the sale may not be relevant."

The same principle has been reiterated in a later decision in **Ahmedabad Electricity Co., Ltd. V. Gujarat Inns Pvt. Ltd.,.**

In **Isha Marbles** case the petitioner therein, was an auction-purchaser from the State Financial Corporation, who was refused service connection on the ground of non-clearance of the dues by the previous owner of the premises in question. On a careful consideration of the facts and circumstances of the case, I am of the opinion that the ratio laid down by the Supreme Court applies to the case on hand, in principle. In the case on hand, admittedly there is no privity of contract between the petitioners, who made an application for fresh service connection, and the respondent-Corporation. In the circumstances, the mere fact that the 1st petitioner is the owner of the premises is immaterial, and on that ground the respondent-Corporation cannot seek enforcement of the contractual liability against the petitioners 1 and 2, who are third parties to the transaction with the tenant, who has already vacated the premises. It is always open to the respondent-Corporation to work out appropriate remedy for recovery of the alleged arrears from the tenant, but that cannot be a ground to refuse fresh service connection as sought by the petitioners.

Accordingly, the Writ Petition is disposed of with a direction to the respondents to consider the application of the petitioners dated 29.7.2005 in accordance with law, without insisting on payment of the arrears alleged to be due from the tenant in connection with Service Connection No.V6-27233, as expeditiously as possible, preferably within a period of four weeks from the date of

receipt of this order. No costs.

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(G. ROHINI, J.)

28th November, 2005.

Kgr

Issue CC in three days.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.20480 OF 2005

28th November, 2005.

Between:

Iqbql and another. .. Petitioners.

And

Superintendent Engineer

(Operation), Distribution XVIII

(North Circle), A.P. Transco.,

Mint Compound, Hyderabad

And two others. .. Respondents.